BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION

STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE,

RE: JUDGE DALE C. COHEN

CASE NO. SC10-348

_____/

RESPONSE TO MOTION IN LIMINE

COMES NOW, the Honorable Judge Dale C. Cohen, by and through undersigned counsel, and files this, his written Response to the Motion in Limine with the Honorable Hearing Panel, and states:

We object and ask that the chairman of the panel simply deny the JQC's motion in liminie. The full panel at the trial must have the right to know *all* of the relevant evidence. F.S. 90.401 and JQC Rule 14 and 15.

The JQC seeks to exclude a series of fraudulent acts committed by attorney Steven Melnick and his clients before Judge Cohen. The rationale behind this motion is that any misconduct committed by Steven Melnick, his clients and others are not relevant and therefore are inadmissible. However, this is not true in the instant case. The JQC contends that Judge Cohen committed a "series of acts" which would demonstrate that he is unfit to sit as a judge or that he abused his

office. Unless this Court allows Judge Cohen to provide ***explanations*** for the reasons the hearings were held upon the motion to recuse, and why Judge Cohen questioned Mr. Gibbs prior to sentencing, then the Hearing Panel will not be able to determine if Judge Cohen was acting appropriately and whether Judge Cohen violated any of the Canons. Although the JQC investigative panel may have questioned Judge Cohen about some of these issues, as can be seen by the transcript, he was cut off by the panel before he had a chance to fully explain his position and his reasons as to why he handled the hearings the way he did. This is clear from a reading of the transcript. In the upcoming trial, Judge Cohen will finally have an opportunity to finish his explanation.

First and foremost, the motions to recuse Judge Cohen were not facially sufficient. We will put on evidence at the trial that the motions were not facially sufficient and could have been denied. They also contained false statements. Judge Cohen had a legal right to have a hearing but, once he held the hearing he then had a duty to grant the motions even though they were based on false statements simply because the rules mandated recusal after such a hearing. Judge Cohen did exactly that. If he wanted to "abuse" his office and "push Mr. Melnick around," he would have held the hearings and then denied the motions. Many judges do that and end up reversed on appeal.

Canon 3(d)(2) requires a judge to take **appropriate action** where there is a

substantial likelihood that a lawyer violated a rule regulating the Florida Bar.

Based on events that Judge Cohen learned of in the days before and after the first motion to recuse, Judge Cohen believed (and had a good reason to believe) that there was a substantial likelihood that Mr. Melnick had violated rules regulating the Florida Bar. Melnick's behavior was unethical and Judge Cohen was correct to hold a hearing on August 28, 2009 to determine whether Melnick was complying with the rules of the Florida Bar.

Although we all agree that Judge Cohen should not have called his wife to testify and that was a mistake for which he rather quickly apologized, there still existed many valid reasons why Judge Cohen held the hearings. Furthermore, the hearing wherein Mr. Butler made it known that he did not know what the reason for the recusal was, confirmed that Melnick was not complying with the rules of the Florida Bar. In fact Melnick was having people swear to affidavits they did not know were true. Melnick's client Mr. Gibbs has verified in deposition that he would have signed "anything" to get out of jail. We have evidence that Mr. Gibbs told a relative on a jail recording conversation that he wanted to hire Melnick for one purpose only, to get Judge Cohen to recuse himself.

A judge accused of misconduct or wrongdoing has a fundamental right to defend himself. JQC Rule 14 and 15 clearly state that. Rule 15 says that Judge

Cohen has "the right and reasonable opportunity to defend against the charges by introduction of evidence…" He has a right to explain what he did and most importantly ***why*** he did it. The key charges in the complaint are as follows:

"3. Your purpose in holding the hearing was to intimidate Mr. Melnick, and in doing so, you used the courtroom and the power of your office to advance the interests of you and your wife."

In order for this Hearing Panel to determine if Judge Cohen was taking "appropriate action" and not committing a pattern of bad acts, the Hearing Panel must hear all of the evidence. The panel needs to hear exactly what happened and why the Judge was justified in his actions. It appears as if Counsel for the JQC tactically only wants to focus on Judge Cohen not being honest in his responses to the JQC and not wanting any evidence of Judge Cohen's reason for his actions to be heard by the Hearing Panel. In order for the Hearing Panel to get a full picture of the evidence and Judge Cohen's behavior they would necessarily need to hear evidence regarding what Melnick and his clients were doing in and out of court with regard to this matter.

Judge Cohen also has a fundamental right to introduce evidence that shows that when Judge Cohen testifies, his testimony is honest and backed up by other evidence. The evidence is relevant. F.S. 90.401. Relevant evidence is evidence

tending to prove or disprove a material fact. F.S. 90.402 states "All relevant evidence is admissible, except as provided by law." The evidence of what Mr. Melnick was doing is relevant to show that Judge Cohen had a good faith basis for asking questions when Mr. Melnick was perpetrating a fraud upon the court.

The JQC quotes *In Re Shea*, 759 So. 2d 631 (Fla. 2000) but, misinterprets the ruling. Nowhere in that case did the court state that evidence was not admissible. In *Shea*, the judge engaged in a pattern of outrageous behavior and was vindictive toward all those around him. The facts of the instant matter are the opposite. Except for Mr. Melnick, all witnesses will testify in the instant matter that Judge Cohen was polite, courteous and respectful toward everyone and Mr. Melnick will only say that he was uncomfortable with how the Gibbs hearing was held. The opinion says that Judge Shea tried to justify his actions by saying that he was trying to improve the administration of justice and that the Supreme Court simply did not agree. It did not say that Judge Shea should have been precluded from presenting evidence that the misconduct of others justified his actions. The opinion says that *even if* others acted improperly, it did not, in that case, justify Judge Shea going on a rampage and attacking almost everyone he came into contact with. *In re Graham*, 620 So. 2d 1273 (Fla. 1993) stands for the same proposition. In the instant matter, Judge Cohen had a specific law that mandated that he do something when a lawyer violated a Bar rule. In *Shea* and *Graham*, there

were no laws that mandated that a judge go on a rampage to clean up the community from corruption.

The JQC also misinterprets *In Re Graziano*, 696 So. 2d 744 (Fla. 1997). That case does not apply to the instant matter. The evidence excluded was evidence of the misconduct of "other" judges that was not related to the matter before them. In the instant matter we are not seeking to introduce evidence of the misconduct of other **unrelated** persons. We are simply introducing evidence of the misconduct of the prime accuser and his client to show **why** Judge Cohen made an inquiry and to show that these individuals were not being honest when they testified before the hearing panel. We have a right to show that Mr. Melnick is not a credible witness. It became clearer as time went on that Mr. Melnick was engaged in highly unethical behavior. He was "forum shopping." He was paid to get a recusal from Judge Cohen because he perceived Judge Cohen as being a harsh sentencer. F.S.90.612(2). The first opportunity he had after he obtained a recusal, Melnick begged the successor judge to send the matter back to Judge Cohen because he was angry that his client did not pay him, fired him and instead wanted a new lawyer and not one he (Mr.Gibbs) has now called in deposition a "cheap lawyer."

The JQC's motion in liminie never explains in detail what evidence they want to have excluded. For that reason alone, it should be denied.

FOR THESE REASONS, we ask the Chairman of the Hearing Panel to deny the motion and handle all the evidentiary issues during the trial. We do not believe there will be many legal disputes in this trial. The real issue is WHY Judge Cohen asked the questions he asked. He must have the right to present evidence to show that he was justified in doing what he did.

Dated this 7th of January, 2011.

Respectfully submitted:

/s/_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished as listed below this 7th day of January, 2011, to the following:

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Also, per Rules 9, and 10 of the Florida Judicial Qualifications Commission, all of our pleadings are being filed as follows:

Original and one copy to the Clerk of the Florida Supreme Court by US Mail. An electronic copy will also be sent in Word 2003 format to the Clerk of the Court per Supreme Court Rule: AOSC04-84. Email to: e-file@flcourts.org

Florida Supreme Court
Attn: Clerk's Office
500 South Duval Street
Tallahassee, Florida 32399-1927

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